

THE SCOTTISH POLICE COMPLAINTS PROCEDURE

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In its Final Report (April 1985) The Police Complaints Board (England & Wales) which believed that 'Complaints are indivisible from the wider subject of accountability generally', commented

'It is perhaps ironic that while the complaints procedures in England & Wales have been in the public eye, the Scottish arrangements, which leave far more discretion to the Chief Constable than in England & Wales, have largely escaped criticism'.⁽¹⁾

While it is true that during the '70s and early '80s attention has focussed mainly on the English procedures, resulting in the establishment of the Complaints Board (1976) and its successor, the Police Complaints Authority (1985) there has been some debate on the Scottish 'arrangements'. This debate however, has not resulted in substantive change in Scotland; no independent element has been introduced.

From the earliest days of professional police forces in Scotland it had been recognised that some machinery for dealing with complaints from the public was necessary. Alfred John List, the first Superintendent of Haddingtonshire Police Force (1832-40) wrote

'If complaints are made against any of his men, he (the Superintendent) will procede(sic) and investigate them, and report forthwith to the Police Committee, and if from the nature of the complaint, he finds it necessary, he may at once suspend the man until the decision of the Police Committee be known'.⁽²⁾

It is impossible to be certain whether such regulations were introduced in all of Scotland's independent forces, but List was influential and the instructions on complaints issued in Perthshire's Handbook of 1856 *The Constable's Vade Mecum* are almost identical to List's proposals. It could be argued that these early rulings provided some independent review of complaints against the police in that although the Superintendent investigated complaints all decisions were taken by the Police Committee (a much more powerful body in the 19th century than it is today).

Although there was no standardised approach to the handling of complaints, the authorities had developed ad hoc procedures which

ensured some independent supervision of the investigation of complaints. However successive legislation increased the responsibility of the Chief Constable for discipline in his force, with the result that the police authority's role in complaints procedures became insignificant. It became the responsibility of the Chief Constable to investigate and make decisions about complaints. Scotland's legal system ensured that in complaints cases alleging a criminal offence, the police must report the offence to the Procurator Fiscal, who then took charge of the investigation, thus providing a degree of independent scrutiny of serious complaints.

There is no indication of general dissatisfaction with the system which had evolved. In Scotland until 1967 each police force dealt with complaints in accordance with Police Discipline Regulations issued by the Scottish Secretary. It was not until 1959 that the issue of complaints procedures emerged in Scotland after the 'Thurso boy' incident was raised in Parliament.⁽³⁾ Allegations were made that no effective action had been taken to investigate complaints made by the boy's father that his son had been assaulted by two policemen. After heated debates, the government appointed a Tribunal of Enquiry which found that one policeman had unjustifiably assaulted the boy.⁽⁴⁾

This Scottish controversy occurred at a time when misgivings about policing in England & Wales were being voiced.⁽⁵⁾ A Royal Commission was appointed to 'review the constitutional position of the police throughout Great Britain, the arrangements for their control and administration' and to consider among other topics 'the relationship of the police with the public and the means of ensuring that complaints by the public against the police are effectively dealt with'.

Despite conceding that,

'A system in which the investigation of complaints is the concern of the police alone may not give the appearance of justice being done'⁽⁶⁾

the Commission was satisfied that in general the relationship between public and police was good, and that the police dealt with complaints 'thoroughly and impartially'. No radical revision of the complaints system was recommended although proposals intended to standardise procedures were made.

Opinion, however, was not unanimous. Three of the Commissioners felt that because of 'the need that justice should be seen to be done' a Commissioner of Rights should be appointed as an 'independent external check on the actions of Chief Constables in handling complaints'.⁽⁷⁾ Dr A L Goodhart was in disagreement with much of the report which he felt unable

to sign. His major criticism of the complaints procedure was that 'it violates the basic principles of justice that no man shall be a judge in his own case'⁽⁸⁾ and recommended the establishment of a legal department staffed by lawyers attached to each regional force which could deal with complaints.

Each of these proposals had the advantage that an independent element would have been introduced into the complaints procedure. The disadvantages were that substantial costs would be incurred, and the police were reluctant to see such proposals introduced. It was the majority view of the Commissioners that their limited proposals were sufficient to win the confidence of any 'reasonable member of the public' and that

'Above all we think that the interests of the public can best be served by resisting any innovation which may weaken the strength of the police in their fight against crime'.⁽⁹⁾

The majority view was accepted. The Police Act 1964 and the Police (Scotland) Act 1967 implemented most of their recommendations establishing broadly similar procedures in England & Wales and Scotland.

The 1967 Act formalised the Scottish complaints procedure and defined areas of responsibility. It became obligatory for

'Every police authority and inspectors of constabulary to keep themselves informed as to the manner in which complaints made by members of the public against constables are dealt with by the Chief Constable'.⁽¹⁰⁾

to ensure that the procedures were applied correctly.

A central role was allotted to the Secretary of State for Scotland. When there is concern about the policing of an area he may order a local enquiry to be held in public or private at his discretion. If the report is not published, the Secretary of State will divulge those findings he feels to be in the public interest. He is empowered to issue discipline regulations. Appeals by constables against decisions of the disciplinary procedure are considered by him.

The regulations issued in 1967 (*Statutory Instruments No.1021 (S 80)*) cover both complaints and disciplinary procedures. Complaints against police officers and the action taken must be recorded in a complaints book held at force or divisional headquarters. The deputy chief constable has overall responsibility for complaints and is required to appoint an

investigating officer of the rank of inspector or above for each case. This officer (whenever practicable) must not be a member of the same division as the alleged offender, must not be a material witness nor have any personal interest in the case. Authority to bring disciplinary charges rests with the deputy chief constable. Although disciplinary proceedings are held in private, the Chief Constable may arrange for a complainer to attend, other than as a witness. The complainer will be informed of the Chief Constable's findings but not the punishment imposed.

When a complaint from which 'it may be reasonably inferred that a constable has committed a criminal offence' (*S.I. No 1021 (S 80) 2(2)*), is received the deputy chief constable must refer it to the regional Procurator Fiscal, a qualified solicitor or advocate, who is empowered to question the complainer and witnesses and to direct police investigations. The Fiscals' role in the procedure is seen 'as providing a full safeguard against any suspicion of police partiality in dealing with complaints'.⁽¹¹⁾

Proposals for Change

Much of the demand for change to the complaints procedure originated in England. Organizations such as the National Council for Civil Liberties and Justice were critical of the 1964 Act and campaigned for the introduction of an independent element into the procedure.

By 1969 a Joint Working Party of the Police Advisory Boards for England & Wales and Scotland was appointed to examine the procedures and advise on any changes. Although their report was not published, it is evident that once again opinion was divided. Some members of the Working Party had suggested that the investigating officer's report should be referred to an independent solicitor for his opinion on whether disciplinary charges should be brought. Alternatively, it had been proposed that an outside body should conduct an ex post facto review of individual cases.

However the government took the view that there were 'considerable practical objections' to these suggestions and that they would not 'command a general confidence.' It was felt that

'where no possibility of a criminal charge is involved, the chief officer of police who is responsible for discipline, must be responsible for what is done about complaints subject of course to the continuing supervision of the police authority.'⁽¹²⁾

Because of the confidential nature of the report there was no real discussion of the matter. The government had decided that no change was required.

In 1971 there was little evidence of widespread dissatisfaction in Scotland, but the Scottish Council for Civil Liberties was (and continues to be) critical of the system, 'having pressed since 1970 for a review of the police complaints procedure'.⁽¹³⁾ However, as the Select Committee on Race Relations and Immigration discovered, there was widespread concern in England. From their witnesses they heard little in favour of the existing system and recommended that

'The Secretary of State take urgent steps to introduce a lay element into enquiries into complaints against the police, possibly by setting up independent tribunals to consider appeals by complainants or police officers dissatisfied with police enquiries into complaints'.⁽¹⁴⁾

There was no government response to this appeal but a private member's Bill was introduced along the lines proposed by the Select Committee. Ronald King Murray drafted a second section of the Bill applicable to Scotland, providing for the appointment of police complaints commissioners for each Scottish region. During the debate on the Bill Russell Johnstone, spokesman for the Scottish Police Federation 'was dubious about part II'.⁽¹⁵⁾ The Bill was withdrawn to facilitate fuller discussion about the introduction of a review procedure.

Two Working Groups were appointed, one for England & Wales and one for Scotland, to investigate the 'handling of complaints against the police.' In the meantime, Police Circular 16/1973 and Police (Chief Constables) Circular 27/1973 incorporating recommendations of the Police Advisory Boards' Joint Working Party, were issued with the aim of ensuring that the investigation of complaints was not only 'impartial but seen to be impartial'. Greater use was to be made of the power to appoint investigating officers from other forces; investigations were to be more closely supervised by the deputy chief constable; complainers were to be given a fuller explanation of how their complaints were disposed of; and police authorities were urged to develop their supervisory role. Evidence suggests that these recommendations were not universally adopted.

When the Scottish Working Group reported, proposals for an ex post facto review procedure were included, although the majority of the Group saw 'no need to introduce such a system at this stage.' Representatives of the three police associations on the Working Group believed that existing procedures were entirely satisfactory and were opposed to the introduction

of an independent review body. While recognising that any change to the procedures was aimed at improving police/public relations, the Working Group maintained that the police were best qualified to investigate complaints and believed it essential that

‘....the responsibility of Chief Constables for discipline within their forces should not in any way be affected.’⁽¹⁶⁾

Given this attitude it is not surprising that the Group’s proposals were limited in scope.

Following the reports of the Working Groups in 1974, legislation was introduced and the Police Act setting up the Complaints Board (England & Wales) passed in 1976. The Scottish Bill, proposing a Police Complaints Panel, initially consisting of a chairman and two members to be appointed by the Scottish Secretary, was not put before the House until November 1976. The Panel was to have no role in cases alleging criminal behaviour, but would have had power to review cases referred by complainers when the deputy chief constable decided against pressing disciplinary charges. If the Panel disagreed with this decision, it could ‘recommend’ or after consultation, ‘direct’ that disciplinary charges be brought. In the case of disciplinary proceedings resulting from a complaint, if the accused officer denied the charge, the Panel would receive a copy of the complaint and a Panel member could attend the hearing as an observer. Although he could express his opinion on the case

‘The function of deciding and imposing punishment shall be discharged only by the Chief Constable.’⁽¹⁷⁾

In view of the Police Complaints Board’s failure to increase public confidence it is unlikely that the Scottish Panel would have proved any more successful. But it was never put to the test. The Bill was withdrawn on 27th May 1977, the official explanation being that

‘.....the parliamentary programme did not permit any prospect that it would make progress. Therefore it simply fell by the wayside because of the difficulties of legislation.’⁽¹⁸⁾

In 1977 the Labour government was indeed faced with problems but the S.C.C.L. offers an alternative explanation for the withdrawal of the Bill. They claim that

‘The general understanding in Scotland was that the abandonment of

the Bill was not unconnected with the fact that it was abandoned during strong pressure by the police for a pay increase which was not granted by the government.’⁽¹⁹⁾

Whatever the explanation, the whole history of proposals for change to the complaints procedure in Scotland seems to indicate a lack of commitment on the part of governments, a certain degree of complacency, and a reluctance on the part of the police to see changes implemented. Almost immediately after the withdrawal of the Bill, the then Scottish Secretary claimed, ‘I am convinced of the need for legislation in this field and will introduce a Bill as soon as possible.’⁽²⁰⁾ But there the matter rested.

The 1981 inner-city riots in England provided an impetus for a review of policing. Evidence given to Lord Scarman during his investigation of the ‘Brixton disorders’ convinced him that

‘.....there is a widespread and dangerous lack of public confidence in the existing system of handling complaints against the police. By and large, people do not trust the police to investigate the police.’⁽²¹⁾

Accordingly he recommended the early introduction of an independent element in the investigation of complaints.

The climate of opinion about the complaints procedure in England & Wales was changing. The Select Committee on Home Affairs conducted a rigorous examination of the system in England & Wales and although not convinced of the need for independent investigations, recommended the establishment of a complaints office in every region, headed by an independent assessor. Even the Police Federation of England & Wales had come round to the view that

‘the time has come for the task of investigating complaints against the police from members of the public to be taken out of the hands of the police and passed in its entirety, to a body of independent investigators.’⁽²²⁾

Although Scotland had not suffered the trauma of riots and Scottish policing methods were not called into serious question, some evidence from Scotland was considered by the Select Committee. The Memorandum submitted by the Scottish Home and Health Department stated that since the withdrawal of the 1976 Police (Scotland) Bill

‘....the Secretary of State has not considered it necessary to make any

change in the system of dealing with complaints against the police in Scotland.'⁽²³⁾

a statement which appears to contradict the Labour Secretary of State's belief in 1977 in 'the need for legislation in this field.'

In 1982 factors influencing the Conservative Secretary of State's view were that the role of the Procurator Fiscal provided a safeguard against doubts of police partiality in serious complaints; there were fewer complaints pro rata in Scotland than in England & Wales; and there was little evidence of public concern about the Scottish procedures. However the Scottish Council for Civil Liberties challenged this assessment in their evidence to the Select Committee. The General Secretary of the S.C.C.L. expressed misgivings about the 'active investigatory role' of the Fiscals, claiming that

'The Procurator Fiscal is for one reason or another not able or willing to give sufficient attention to the case for it to be much more than a police investigation of the police by the police.'⁽²⁴⁾

Paul Lavery also of the S.C.C.L., 'flabbergasted' as the small number of complaints recorded, commented

'This demonstrates clearly not so much that there are good relationships between the police and public in Scotland, but the fact that many people do not see the point in making complaints at all and certainly that has been my experience especially of people living in the outer housing schemes especially in Glasgow.'⁽²⁵⁾

While agreeing that there appeared to be a lack of public concern about the topic in Scotland, the S.C.C.L. explained

'....it is because the people who should be concerned and that is the people it would most directly affect, are fed up complaining about it and those people are individuals and there tends not to be the same sort of organisations in Scotland to give voice to individual people's complaints as there are based here in London and other major urban centres.'⁽²⁶⁾

Despite these criticisms the Select Committee was favourably impressed by the Scottish system. As some of their recommendations had implications for Scotland, the Scottish Secretary circulated a consultative note to the Convention of Scottish Local Authorities, individual police

authorities, the police associations, and the Scottish Council for Civil Liberties inviting their views. This initiative resulted in no radical change because

'The general thrust of the comments received was that the existing arrangements should continue without being embodied in legislation; that the flexibility they allowed enabled minor complaints to be dealt with to the satisfaction of all parties without recourse to the full statutory disciplinary process; and that formalisation might simply serve to reduce their effectiveness and value.'⁽²⁷⁾

Although the Scottish procedures have been discussed frequently since 1967, there has been no rigorous examination of the system. There has been no general review as in England, where opinions have been sought from a wide spectrum of society. Views which have been considered have been mainly those of people involved in the existing system. The Scottish Working Group (1974) consisted of five representatives from the Home and Health Department, five police representatives, HM Chief Inspector of Constabulary (Scotland) and one representative each from the Crown Office, the Association of County Councils, the Convention of Royal Burghs and Counties of Cities Association. The Scottish witnesses to the Select Committee (1982) were, an Undersecretary from the Home and Health Department, an Assistant Inspector of Constabulary, two representatives from the Crown Office the deputy chief constable of Strathclyde, two members of the Scottish Police Federation and three officers from the S.C.C.L.

Although the S.C.C.L. had suggested to the Select Committee that the Glasgow Bar Association, the Scottish Legal Action Group, and community and information groups would endorse their criticisms of the complaints system in Scotland, there is no indication that the views of these groups were sought. It is perhaps not surprising that the 'Scottish arrangements..... have largely escaped criticism.'

The Working of the Complaints Procedure

While attempts have been made to improve the efficiency and integrity of the complaints procedure in Scotland, there appear to be some weaknesses which invite criticism. Recommendations issued in Police Circulars cannot be enforced and reliance on this method of introducing improvements is not likely to inspire public confidence.

The recommendation that an explanatory leaflet should be made available at police stations (*Police Circular 6/84*) has been implemented in each force area and is a welcome innovation. If members of the public wish to make a complaint about the behaviour of a police officer, they have several options. Complaints may be made directly to a police station, by letter to the Chief Constable, or can be lodged with the local Procurator Fiscal. It is also possible to lodge a complaint with any reliable authority – for example, a Member of Parliament, a councillor or solicitor – who will refer the complaint to the Chief Constable. Whichever option is adopted, the complaint must be recorded and a detailed account of actions taken held at force headquarters.

While hearsay evidence cannot be regarded as proof, it suggests that when a direct approach is made to a police station, the potential complainant may feel intimidated or pressured not to proceed with a complaint. Obviously some complaints are frivolous or malicious and it is entirely justifiable that a warning is issued that the complainant may be reported to the Procurator Fiscal in such cases. Allegations about the difficulty of lodging complaints directly are largely undocumented but support the claim made by the S.C.C.L. that

'It is not uncommon for a complainant to go round to the local police office with a complaint and for that complaint not to be passed on but for an officer, perhaps at the level of sergeant, to visit the complainant at home instead of passing the complaint to the Chief Constable's office.'⁽²⁸⁾

If the procedures are to be fair to complainants there should be no opportunity for junior officers to apply pressure. It is also unfair to officers, most of whom do act with integrity, that such doubts exist. Although some complaints against the police are made because of a misunderstanding of police powers and duties and the complainant may not wish to proceed when an explanation is given, it is essential that correct procedures are adhered to.

Even when this is done, and the complainant is visited by a senior officer suggestions have been made⁽²⁹⁾ that undue pressure may be exerted in order to have the complaint withdrawn. Since the interview is normally held in private it is difficult for the police to refute allegations of undue pressure.

The amended regulations (*Statutory Instruments 1982 (S 119 5(1))*) allow for complaints to be dealt with informally, if the deputy chief constable decides that the complaint is of a minor nature. In such cases the officer involved is allowed to comment on the complaint and may be given a warning about his behaviour. A senior officer explains the officer's

behaviour and if the complainant is satisfied, the need for fuller investigation is obviated. Increasing use has been made of this procedure, and it has obvious advantages. However, once again it is possible for a complainant to claim he was pressured into accepting the explanation. This procedure could be improved quite simply and without legislation if the proposal

'....that the record of the interview should include a record of the investigating officer's presentation to the complainant: that this should form a distinct section of the report: and that it should be separately signed by the complainant.'⁽³⁰⁾

were incorporated into the regulations.

When it appears that a more serious offence against the Police Discipline Regulations may have been committed, a senior officer is appointed by the deputy chief constable to investigate the complaint. While it is acknowledged

'....that complaints can often be dealt with by an internal investigating officer without prejudicing the absolute need for impartiality'

the guidelines stress that the appointment of an outside investigating officer is

'....justifiable and indeed preferable....for instance to satisfy an evident public expectation that there should be a demonstrably independent investigation.'⁽³¹⁾

The Scottish Office is obviously aware of some public disquiet about the investigation of complaints by members of the same force. It is difficult to ascertain how often outside investigating officers are appointed, but in 1973 the '...power to request an officer from another force (had) been seldom used.'⁽³²⁾

During the investigation of complaints the officer involved is not required to make any statement which could be used against him, with the result that

'...certain otherwise good and credible complaints founder on a police officer's right of silence.'⁽³³⁾

An analysis of the 1985 statistics is revealing and suggests that there is difficulty in obtaining evidence to support a complaint. Of the 1,716 complaints dealt with, 186 (10.8%) were withdrawn, or abandoned, 279 (16.2%) were resolved by explanation and only 153 (8.9%) were found to be unsubstantiated. Yet on completion of investigation, action was taken

on only 150 complaints, leaving 948 (55.2%), which had warranted investigation, resulting in no action. Since

'A citizen who suffers an abuse at the hands of the police is peculiarly helpless, from the powers exercised by officers, to collect and preserve evidence, or to have this done on his or her behalf'⁽³⁴⁾

it is perhaps prudent to consider making it obligatory for the officer involved to give a full and satisfactory account of his conduct to the investigating officer.

A large number of complaints is referred every year to the Procurator Fiscal, (1985 57% of complaints dealt with) and it appears that the regulations requiring the deputy chief constables to refer are stringently applied. However, of these complaints, very few (1985 1.7%) result in criminal proceedings. Recent highly publicised cases in England have illustrated the police lack of success in investigating criminal allegations against the police which are obviously well founded. Theoretically, in Scotland, such investigations are undertaken by the Fiscals. Yet the Police Complaints Board thought that

'In Scotland though the Procurator Fiscal determines whether the evidence of an investigation justifies criminal proceedings, the investigation of complaints is in practice conducted by the police.'⁽³⁵⁾

Doubts exist that the Fiscals cannot possibly carry out extensive investigations because of an excessive work-load. In 1982 the total strength of the Fiscal service was, '916 of whom 210 are legally qualified' (H C 98 VIII para 749). This does not seem an adequate number to fulfil both investigatory and prosecuting roles. As Desmond Browne of the S.C.C.L. pointed out,

'If the Procurator Fiscal is to be an investigator, then I would like to see the Procurator in the courts in which I work as investigator. In order to do that he and his five assistants would need some considerable time off from prosecuting the 10,000 cases they prosecute every single year in the summary courts'⁽³⁶⁾

While in theory the role of the Procurator Fiscal may provide a safeguard against any suspicion of police partiality in dealing with complaints, the evidence on practice leaves grounds for concern. As long as this exists, the complaints procedure cannot be regarded as satisfactory.

When complaints have been investigated, by the police disciplinary

process or by the Fiscals; the guidelines recommend that each complainer be given as full an explanation as possible of how his complaint has been looked into. Yet it appears that this is frequently not provided.

'It is normal for people to receive a letter which amounts to three lines each with a paragraph to itself stating simply that the Chief Constable or the Procurator has investigated...and found no grounds for action.'⁽³⁷⁾

A complainer who is dissatisfied with the outcome of his complaint or with the explanation offered, has no right to a review of his case. Although the Scottish Office maintains that complainers are largely satisfied, the S.C.C.L.

'...can only conclude that... the Scottish Home and Health Department have mislaid substantial correspondence with the S.C.C.L. and other bodies and with individual complainers and their solicitors.'⁽³⁸⁾

When such dissatisfaction exists the credibility of the complaints system is called into question.

The role of H M Inspectorate of Constabulary and Police Authorities

Since the Inspectors of Constabulary are bound to 'visit and inquire into the state and efficiency of the police force' under the 1967 Act they are in close contact with Chief Constables and police authorities and have access to all information on complaints held by each force. In his annual report the Chief Inspector includes a survey of the complaints received during the year.

Normally there is little comment apart from a general expression of approval of the way in which complaints are dealt with. In 1977 – the year in which the Police (Scotland) Bill was withdrawn – it was noted that

'During the past few years the standard of inquiry into and the disposal of complaints in Scotland has improved'⁽³⁹⁾

an indication perhaps that the procedures previously had been neither as impartial nor as thorough as has been claimed. Full discussions were held with all Chief Constables and their deputies and, as a result, minor changes were agreed. It would therefore seem that the inspectorate can, by discussion and suggestion, exert some influence on how complaints are

dealt with. The Chief Inspector (always an ex Chief Constable) provides a useful link between forces and the Scottish Office, which, when 'good practices' are identified may suggest their implementation throughout the country. It is evident however, that the inspectorate is limited to guidance only and has no power to compel Chief Constables to comply with recommendations. On the other hand, if regulations are flouted a report will be made to the Scottish Secretary. Although the inspectorate has a general supervisory role, supervision is not close since forces are inspected only once a year.

While it appears that the inspectorate has access to information on complaints procedures, the Chief Constable is not obliged to give the police authority access to all information.

'The amount of supporting detail furnished to the police authority is within the discretion of the Chief Constable, but....he should, consistently with observance of the principle that the police reports of enquiries are confidential, bear in mind the need to supply the police authority with the necessary information to enable them to carry out their statutory duty.'⁽⁴⁰⁾

Therefore one would expect to find variations in the way in which authorities fulfil their obligations. Indeed the Scottish Office makes it clear that 'the interpretation of the statutory requirements is primarily a matter for individual authorities.' By implication it seems that the Scottish Office does not regard the 'duty' of police authorities to be a crucial one.

Information gleaned mainly from regional officials illustrates how the authorities 'keep themselves informed'. The authority areas have been numbered because definitive information is not available.

1. The committee receives quarterly statistical tables recording the number of complaints received, their outcome and the number of hours spent on investigation. The type of complaint is categorised. Questions are rarely asked. Since the issue of *Police Circular 6/84* two committee members visit Police Headquarters (the frequency of these visits was not revealed) to discuss complaints with the deputy chief constable.

2. A bi-monthly report is made by the Chief Constable to the committee and statistics supplied, similar to those in 1, but with no categorisation of complaints by type. The Complaints Book is open to inspection by the committee.

3. 'The responsibility is undertaken most fully by members of the...committee, examining the workings of the complaints system during regular visits to Police Headquarters.' (letter 5.3.86). Registers recording complaints and disciplinary matters are available and subject to the 'fullest scrutiny'. Discussions on specific complaints are held with the deputy chief constable. Regular statistical information is not considered necessary.

4. The committee is supplied with annual statistics which do not include a categorisation of complaints by type. The Complaints Book is submitted for inspection every six months. 'There has been no controversy about the complaints procedure in recent years.'

5. The committee receives detailed quarterly reports from the Chief Constable. Types of complaint are categorised for each division of the force. Reference was made in the latest report (6.1.86) to the appointment of an outside investigating officer for a complaint of alleged assault 'which had been brought to notice by a national newspaper.' The availability of detailed information is an innovation initiated by the Chief Constable in response to *Police Circular 6/84*.

6. The committee receives quarterly statistics which do not specify the number of hours spent on investigations nor a categorisation of complaints by type. The Complaints Book is presented for inspection at Committee meetings. A sub-committee discusses specific complaints with the deputy chief constable.

7. At the monthly meetings of the committee, attended by the deputy chief constable, the statistics, which do not include a categorisation of complaints by type, and the complaints book are examined. One member of the committee expressed dissatisfaction with the amount of information supplied and feels that the committee as a whole should play a more active role in the complaints procedure.

8. At monthly meetings of the committee, statistics detailing the type of complaint and the number of hours spent on investigation, are examined. Since 1985 four (all party) committee members visit police headquarters bi-monthly and discuss each complaint with the deputy chief constable. A representative of the Police Federation is present to ensure police confidentiality is maintained.

There is then a variety in the amount and nature of information supplied to police authorities in Scotland and it appears that the majority do not play an active role in the complaints procedure. Police authorities are

dependent on their Chief Constables for information; they cannot compel him to divulge that information. No criticism of existing relationships between Chief Constables and their authorities is implied, but should an authority be dissatisfied about the way complaints are dealt with, it may only recommend improvements which a Chief Constable is not required to implement. If, as the Scottish Secretary has stated

‘...police authorities have an important role to fulfil in reassuring the public that complaints against the police are dealt with thoroughly and with complete impartiality’⁽⁴¹⁾

it is important that their role should be a meaningful one. Existing legislation does not define their powers clearly.

Complaints Procedures in England & Wales

Reforms of the complaints procedure in England & Wales were introduced as a result of a growing awareness, by the government and by the police themselves, of the lack of public confidence in the system and a realisation of the implications this lack of confidence has for policing in general. The first independent element, the Police Complaints Board was empowered to act in a supervisory capacity in complaints implying a breach of the discipline regulations. The Board had no investigatory role and critics claimed its brief was too limited in scope. An incoming chairman of the Board, Sir Cyril Philips was critical of its performance declaring that ‘the existing Board had kept so low a profile that it has climbed into a ditch.’⁽⁴²⁾

The flurry of investigations into policing in England & Wales – the Scarman Inquiry, the Select Committee on the Police Complaints Procedure, the Plowden Working Party, the Royal Commission on Criminal Procedure – had all concluded that changes in the complaints procedure were essential with the result that the Complaints Board was replaced by the Police Complaints Authority in 1985.

Under the terms of the *Police and Criminal Evidence Act 1984* (part IX) the Authority appears to be a more powerful body than the Board. The Authority must be informed about complaints involving death or serious injury; can demand to be informed about any other type of complaint; has a supervisory role in the investigation of complaints; has the power of veto over the appointment of investigating officers; can order the appointment of outside investigating officers; and is empowered to order reports of investigations to the D.P.P. A report of the investigation into a complaint

supervised by the Authority must be submitted to it for an opinion before any disciplinary charges are brought. If the Authority deems it desirable, disciplinary proceedings may be held before a Tribunal, composed of a chairman (the Chief Constable) and two members of the Authority. Evidence is considered by the Tribunal and the decision on the guilt or otherwise of the accused officer may be reached by a majority, although punishment is determined by the Chief Constable after consultation with the Tribunal members. Any accused officer, who may lose his job or rank as a result of disciplinary proceedings, has the right to legal representation at a disciplinary hearing – a right not allowed to the police in Scotland.

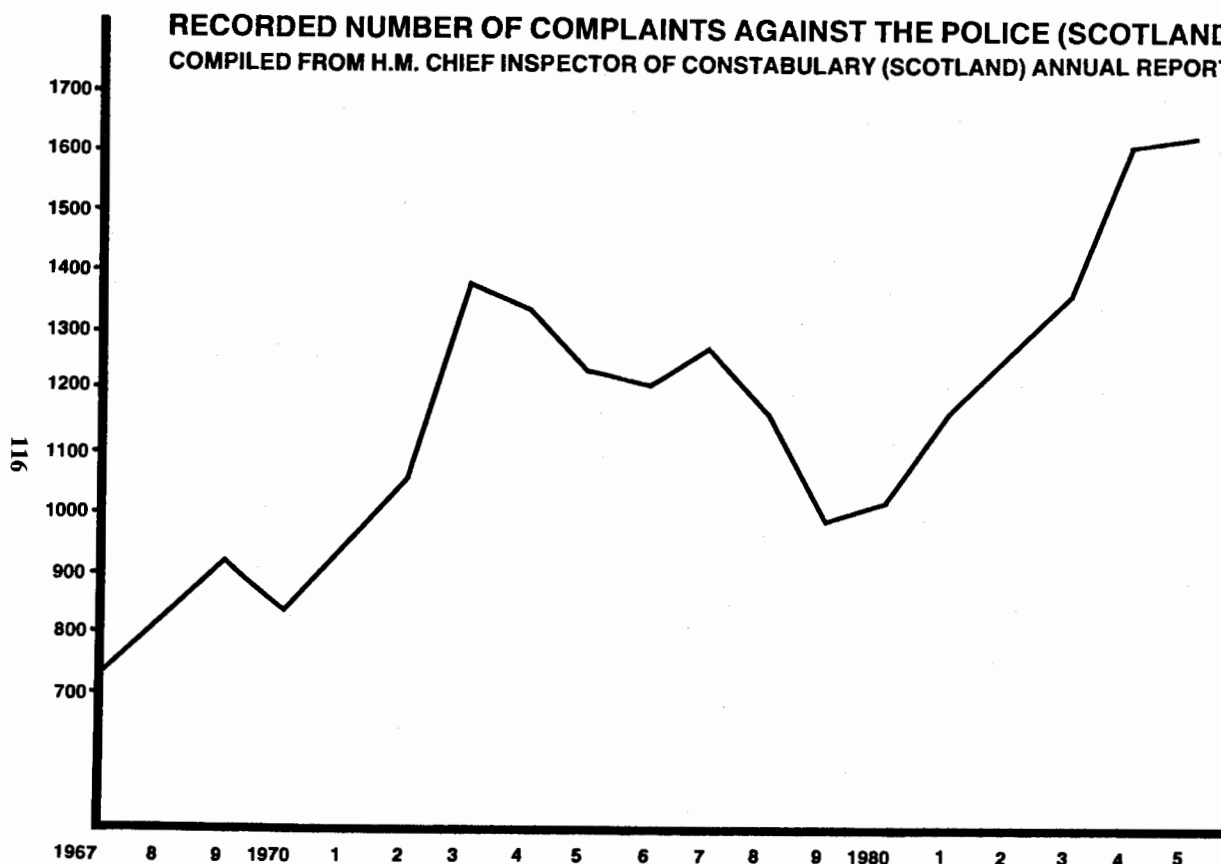
The complaints procedure in England & Wales now differs considerably from that in Scotland. It is more open, is subject to close supervision by an independent body empowered to direct investigations and order reports, and is fairer in disciplinary proceedings to accused officers. But the fatal flaw remains – investigations into complaints are still conducted by the police. It is too soon to pass judgement on the effectiveness of the new Complaints Authority, but Reiner suggests that ‘It is unlikely that pressure in the area of complaints will cease’⁽⁴³⁾ until a procedure involving completely independent investigators is introduced.

Although there has been little public debate on the complaints procedure in Scotland, increasingly disturbing cases are being reported by the media, indicating perhaps that the topic may become more controversial. The number of complaints recorded in Scotland has been rising dramatically recently (see graph) increasing by 64% between 1979 and 1985. It would appear that there are no grounds for complacency, especially if a number of those who complain is not satisfied.

As the Scottish Office told the Select Committee in 1982, the number of complaints in Scotland, pro rata, is significantly lower than in England & Wales (see Table 1 line 2). But the ratio is changing. Over the period 1981-1985 the number of complaints per 1,000 officers has risen from 83.1 to 129, while in England and Wales it has declined. On the basis of available statistics it seems that the upward trend in Scotland is likely to continue. Although there may be various possible explanations for this – for example, a heightened awareness of individual rights, or a more careful recording of complaints – such increases indicate that the public is becoming more critical of police behaviour.

The Scottish statistics do not include the number of complaints substantiated, (line 3), but if the number of complaints resulting in proceedings (Result by Outcome, sub-total) is treated as in England &

RECORDED NUMBER OF COMPLAINTS AGAINST THE POLICE (SCOTLAND) 1967-1985
COMPILED FROM H.M. CHIEF INSPECTOR OF CONSTABULARY (SCOTLAND) ANNUAL REPORTS 1967-1985.



Scottish Government Yearbook 1987

TABLE 1: Comparative Table of complaints Against the Police in Scotland and in England & Wales 1981 to 1985

	SCOTLAND					ENGLAND & WALES (INCLUDING MET)				
	1981	1982	1983	1984	1985	1981	1982	1983	1984	1985
Total number of complaints	1096	1085	1346	1598	1716	32443	32086	30681	31174	28253
1 Disposed of	83.1	82.2	84.5	120.2	129.0	273.1	269.0	255.2	260.2	234.0
2 Per 1000 officers	Figures	not	given in	HMI	Report	1542	1787	1448	1561	1155
3 Substantiated			(Scotland)			4.8%	5.5%	4.7%	5.0%	4.1%
as % of 1	648	618	159	154	153	15263	15395	14353	15992	11650
4 Unsubstantiated	59.1%	56.9%	11.8%	9.6%	8.9%	47.0%	48.0%	46.8%	51.3%	41.2%
as % of 1	*N/A	N/A	691	859	948					
5 With no proceedings recommended by P.F.			51.3%	53.7%	55.2%					
as % of 1										
6 Found to be trivial or unfounded										20+
7 Resolved by explanation(s)/informally (E. & W.)	27	49	155	259	279	—	—	—	—	21620
as % of 1	2.4%	4.5%	11.5%	16.2%	16.2%					7.6%
8 Withdrawn/abandoned	305	250	181	180	186	15638	14904	14880	13621	13266
as % of 1	27.8%	23.0%	13.4%	11.3%	10.8%	48.2%	46.5%	48.5%	43.7%	46.9%
Subtotal (Scotland) Total E & W)	980	917	1186	1452	1566	32443	32086	30681	31174	28253
Result by outcome										
9 Resulting in disciplinary proceedings	5	12	16	12	10	213	238	182	158	212
10 Resulting in criminal proceedings	11	21	34	24	29	39	41	33	32	31
11 Resulting in criminal (traffic)						23	18	12	9	3
12 Resulting in formal warning			35	23	28	N/A	N/A	N/A	N/A	N/A
13 Resulting in corrective advice	32	47	75	87	83	—	—	—	—	—
14 Dealt with by other means	N/A	N/A	N/A	N/A	N/A	1282	1494	1231	1366	916
Sub Total	48	80	160	146	150	1557	1791	1458	1565	1162
as % of 1	4.4%	7.4%	11.9%	9.1%	8.7%	4.8%	5.5%	4.7%	5.0%	4.1%
Total Scotland	^x 1028	^x 997	1346	1598	1716	Direct comparison cannot be made, as in England & Wales the number of cases (as opposed to the of complaints) sent to the D.P.D. is recorded.				
5 Referred to Procurator Fiscal	612	694	707	883	977					
as % of 1	55.8%	64.0%	63.4%	55.5%	57.0%					
Number of officers found guilty										
(a) of criminal offences	2	3	.6	not given	not given	27	16	30	14	23
(b) of traffic offences	N/A	N/A	N/A	N/A	N/A	15	15	7	8	2

in 1981 & 1982 included as unsubstantiated.

+ Recorded only by the Met in 1985

0 New procedure introduced by Police & Criminal Evidence act

x Figures, as given in HMI (Scotland) Reports, do not tally

Tables compiled from annual reports of

(1) Her Majesty's Chief Inspector of Constabulary (Scotland)

(2) Her Majesty's Chief Inspector of Constabulary

(3) The Commissioner of the Metropolitan Police 1981-1985.

Wales as the number substantiated (a necessary procedure in the absence of comparable statistics) it appears that the Scottish rate of substantiation has been consistently higher than in England & Wales. However, on closer inspection it can be seen that although in Scotland the number of complaints resulting in criminal proceedings (line 10) is substantially higher, pro rata, than in England & Wales, (force ratio E. & W. 9 to S. 1), a lower proportion of Scottish officers is found guilty. (line 16)

It is debatable whether criminal proceedings resulting in a not-guilty verdict can be regarded as substantiated complaints. If not-guilty verdicts are discounted in both areas the rate of substantiation is; Scotland, 3.5% (1981) : 5.7% : 1982 : 9.8% (1983), while in England & Wales the figures are as given in the table. (line 3) In 1983, the proportion of substantiated complaints (9.8%) was double that in England & Wales (4.7%). It may be that in 1983 police behaviour deteriorated, which does not seem on the face of it to be a reasonable conclusion, or that the complaints procedure 'clear-up' rate improved. Because the Scottish statistics no longer include the number of officers found guilty, it is impossible to ascertain if the substantiation rate in Scotland has remained higher than in England & Wales. There, the low rate of substantiation has been a contributory factor to the lack of public confidence in the complaints procedure.

Research carried out by Ken Russell⁽⁴⁴⁾ indicates that this lack of confidence is justified. In the force area studied 9% of complaints were substantiated but the senior officer involved in the project suggested that 38% should have been. Even if the Scottish rate has remained higher than England & Wales, it seems that there is still considerable scope for improvement.

There appears to have been a remarkable change in the proportion of complaints found to be unsubstantiated in Scotland (line 4). In 1981 and 1982, complaints which resulted in no proceedings being recommended by the Procurator fiscal were included as unsubstantiated. Since then these have been detailed separately (line 5). If these complaints are regarded as unsubstantiated, the proportion of unsubstantiated complaints in Scotland has been about 63% since 1983; much higher than in England and Wales. There the number has fluctuated, dropping considerably in 1985 to 41.2% (line 4). Interestingly this significant drop occurred when the informal resolution procedure was introduced in England and Wales, with 7.6% (line 7) of complaints being dealt with by this method in 1985.

It must be noted that the number of complaints withdrawn or abandoned in Scotland is markedly lower than in England & Wales. There

the lowest figure recorded was 43.7% in 1984 (line 8), while in Scotland the proportion of withdrawn complaints has declined from 27.8% (1981) to 10.8% (1985). Perhaps the decrease in Scotland is the result of more careful supervision. But the decline in the withdrawal rate almost exactly corresponds to an increased use of informal resolution procedures (line 7). If complainers are genuinely satisfied by this method of resolution it is a welcome innovation.

Neither of these explanations can account for the fact that the withdrawal rate in Scotland is significantly lower than in England & Wales. Russell's research identified some reasons for withdrawn complaints which did not reflect badly on the system in England and presumably such reasons, (such as misunderstandings or distortion perceptions) also exist in Scotland. However other reasons included a fear of police reprisals and pressure by investigating officers. It may be the case that in Scotland complainers experience less pressure or intimidation (although evidence gathered by the SCCL indicates that such pressures exist) and for that reason the withdrawal rate is lower. On the other hand, it may be that the complainer is less likely to withdraw in Scotland are less likely to withdraw because a higher proportion of complaints are allegations of criminal behaviour.

During the two years when comparison is possible, the proportion of complaints alleging assault in Lothian and Borders was considerably higher than in the Metropolitan force area. It is extremely unlikely that the Lothian and Borders police are more violent than those serving in the Metropolitan force. Consideration must be given to the view that 'tactical' complaints are made against the police by people who themselves have been charged with offences. Undoubtedly such complaints are made, but since the statistics do not detail the number of complaints found to be malicious or unfounded, it is impossible to ascertain whether there is a higher incidence of tactical complaints in Lothian and Borders. Again this seems unlikely.

In the Metropolitan force area the proportion of complaints alleging criminal behaviour was 28.7% (1984) and 32.7 (1985). The corresponding figures for Lothians and Borders were 47.7% (1984) and 43.1% (1985). These figures appear disturbingly high but it must also be noted that the Lothian and Borders figure is lower than the 57.% of complaints referred to the Procurator Fiscal in Scotland as a whole in 1985.

However as Table 2 illustrates, the number of complaints made in Lothian and Borders about other matters' is lower than in the Metropolitan

area. From this limited evidence it is possible to argue that Scots complain less often about 'other matters'. This may account for the lower pro rata number of complaints recorded in Scotland. It may also partially explain the lower withdrawal rate. There may be cultural factors involved which result in a lower withdrawal rate in Scotland but a complainer is less likely to withdraw if he feels that a criminal offence has been committed.

TABLE 2: Analysis of the nature of complaints against the Police

Lothian and Borders Metropolitan Police				
	1984	1985	1984	1985
Total Number of Complaints	254	353	6594	5462
Nature of Allegation as a percentage of Total Complaints	%	%	%	%
Criminal				
Assault	42.5	41.1	21.4	25.0
Other Criminal Conduct	5.1	2.0	—	—
Bribery	—	—	0.5	0.3
Perjury	—	—	2.0	1.8
Conspiracy	—	—	1.6	2.0
Theft	—	—	1.5	1.9
Traffic	—	—	1.7	1.4
Total Criminal	47.6	43.1	28.7	32.4
Other Matters				
Improper Attitude	9.4	11.6	17.5	16.3
Misconduct of Officer	25.6	30.9	—	—
Neglect of Duty	9.8	6.8	10.7	10.3
Unjustified Harassment	7.5	7.6	2.7	2.9
False Evidence	—	—	0.6	0.8
Irregularity	—	—	37.2	35.4
Mistaken arrest	—	—	0.1	0.1
Racial discrimination	—	—	0.8	1.1
Stops in Street	—	—	0.5	0.5
Miscellaneous	—	—	1.1	0.5
Total Other Matters*	52.3	56.9	71.3	67.9

* Figure have been rounded up

Tables compiled from:
Statistical Returns to the Lothian & Borders Police Board – 6th January 1986
and Reports of the Commissioner of the Metropolitan Police – 1984 & 1985.

The examination of complaints statistics has revealed a number of

differences between Scotland and England & Wales. In Scotland a higher proportion of complaints result in criminal proceedings. However in England & Wales, more officers who are prosecuted are found guilty. In England & Wales, pro rata, a much higher proportion of officers face disciplinary proceedings (see Table 1 line 9) and more are dealt with by 'other means' (line 14) than the number of officers who receive formal warnings or corrective advice (lines 12 & 13) in Scotland. In both areas the number of substantiated complaints is low, as is the number of officers found guilty of criminal offences.

Because of the implications for police/public relations if complainers are not satisfied with the outcome of their complaints, the very high number of unsubstantiated complaints and the low number of withdrawals in Scotland are disturbing aspects of the Scottish statistics. Unfortunately, because the police conduct the investigations into complaints, the belief exists that they are less than meticulous in seeking evidence. It is believed that the 'police culture' inclines officers to close ranks to protect their fellow officers accused of offences.

On the other hand the police believe that they are best qualified to conduct investigations. They spend a great deal of time on this work and point out that it is in their interest that complaints should be dealt with to the satisfaction of the public. During 1985, in Lothian and Borders 5755 hours were spent investigating 353 complaints. Under the existing system many highly trained officers are diverted from operational duties to investigate complaints. For example, the Complaints and Discipline Branch of the Strathclyde force employs 16 officers above the rank of inspector. The cost of the complaints system in terms of police time, is high.

Although there has not, as yet, been any significant controversy about the complaints procedure in Scotland, there are several weaknesses in the system which have implications for policing in general. considerable changes in policing and in public attitudes have taken place since the Royal Commission reported in 1962. Rather than wait until controversy develops, it is preferable that a Royal Commission be appointed to review not only the complaints procedure in Scotland but also the wider issue of police accountability.

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